

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 7853 of 1993

For Approval and Signature:

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
?

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AGRICULTURAL PRODUCE MARKET COMMITTEE - Petitioner(s)
Versus
BORSAD MUNICIPALITY & 1 - Respondent(s)

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Appearance :

MR TUSHAR MEHTA for Petitioner(s) : 1,
 Mr.D.P.Kinariwala for MR RAJESH R DEWAL for
 Respondent(s) : 1,
 NOTICE SERVED for Respondent(s) : 2,

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CORAM : HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 28/04/2006

CAV JUDGMENT

1. The present writ petition brings to light a peculiar situation in which one statutory authority has invoked the writ jurisdiction of this Court with,

a prayer to issue a writ of mandamus to another statutory body, both of which exercise jurisdiction under their respective Statutes, in the same area.

2. The petitioner herein is the Agricultural Produce Market Committee, Borsad, which is constituted under the provisions of the Gujarat Agricultural Produce Markets Act, 1963 (herein-after referred to as "the APMC Act"). The petitioner Committee is constituted of 16 persons as provided for under Section 11 of the Act.

3. The respondent is the Borsad Municipality, constituted under the provisions of the Gujarat Municipalities Act, 1963 (hereinafter referred to as "the Municipalities Act"). At the relevant point of time, when the petition was filed, the term of the Borsad Municipality had expired and the State Government, in exercise of powers under Section 263(a) of the Municipalities Act, had appointed the Mamlatdar and Executive Magistrate of Borsad Taluka as its Administrator. The administrative and

executive control of the respondent Municipality was in the hands of the Chief Officer appointed under Section 47 of the Municipalities Act.

4. It is the specific grievance of the petitioner Market Committee that the respondent Municipality is operating a fruit and vegetable market within the area of the Agricultural Produce Market Committee, Borsad, which is in violation of the provisions of the APMC Act in general and Section 63 in particular. According to the petitioner, it is not permissible for any local authority or body to operate any market within the area, which is declared as a "market area" as defined under Section 2(xiii) of the APMC Act. It is alleged by the petitioner that in spite of the clear and explicit embargo contained in the APMC Act, the respondent municipality has continued to operate such market within the area which is declared as "market area" by the State Government.

5. An affidavit in reply has been filed by the respondent Municipality, which has been sworn by Shri

R.T.Patel, Chief Officer, Borsad Municipality and affirmed at Borsad on the 3rd day of September 1993. Thereafter, an additional affidavit in reply, sworn by Shri Rameshbhai R.Ultra, Chief Officer, Borsad Nagarpalika, affirmed on the 10th day of January, 2006 has been filed.

6. Learned counsel Shri Tushar Mehta has appeared on behalf of the petitioner Market Committee. On behalf of the respondent Municipality, Shri D.P.Kinariwala appearing for Shri Rajesh R Dewal, has addressed arguments at length. I have heard the learned counsel for both the parties and gone through the pleadings and material on record.

7. Shri Tushar Mehta, learned counsel for the petitioner, has drawn the attention of this Court to the relevant provisions of the APMC Act, its Scheme and the aims and objects for which it has been enacted. He submits that the APMC Act has been enacted with a view to consolidate the law relating to regulation of buying and selling of agricultural produce, with a specific purpose of removing the

middle-man, who was responsible for exploiting the farmers at the time when the farmers sell their agricultural produce.

8. Section 2(xiii) of the APMC Act defines "market area" and is reproduced below:

""market area" means any area declared or deemed to be declared to be a market area under this Act"

9. It is submitted that in exercise of the powers under Section 7(2) of the APMC Act, which prescribes the procedure for declaration of the market yards, market sub-yards and market proper within the area which is declared as "market area", the Director of Agricultural Marketing and Rural Finance, declared that with effect from 3.5.1982, the locality in the market area of the APMC, Borsad shall be vegetable and fruit sub-market yard, Borsad. The Notification dated 3.5.1982 was published in the official Gazette and a copy thereof is annexed to the writ petition as Annexure "A". It is further submitted by Shri Tushar Mehta that as per the above referred definition of "market area", the "market area" is any area which is

declared to be a "market area" under the APMC Act. Sections 5.6,7 and 8 prescribe the procedure for the declaration of the market area.

10. Section 5 of the APMC Act empowers the Director to publish a Notification in the official Gazette and declare his intention of regulating the purchase of and sale of such agricultural produce in such area which may be specified in the said notification, after following the procedure envisaged in Sections 5 and 6. The provisions of Section 6(2) are relevant and are being reproduced herein-below:

"S.6(2) Notwithstanding anything contained in any law for the time being in force, from the date on which any area is declared to be a market area under sub-section (1), no place in the said area shall be used for the purchase or sale of any agricultural produce specified in the notification except in accordance with the provisions of the Act:

Provided that pending the establishment of a market in such area the Director may grant a licence to any person to use any place in the said area for the purchase or sale of any such agricultural produce and a licence so granted shall, unless it is cancelled or otherwise ceases to be in force, continue in force until the establishment of a market in the said area and for such period thereafter as may be prescribed."

11. Section 7 prescribes the procedure to be followed while constituting market yard or sub-market yard or market proper.

12. Section 8 makes it obligatory for the persons operating in the "market area" or any part thereof, to do so **only under and in accordance with** the conditions of **licence** which is required to be obtained under the provisions of the APMC Act by such persons (emphasis supplied).

13. According to the learned counsel for the petitioner, the Scheme of the APMC Act, as is clearly brought out by a perusal of the relevant provisions thereof, reproduced hereinabove, envisages the constitution of a market yard and declaration of the market area and a prohibition is imposed by the statutory provisions to the effect that, once a particular area is declared as a "market area" no place in the said area shall be used for the purchase or sale of any agricultural produce specified in the

notification, except in accordance with the provisions of the Act. He submits that it is apparent from the language of Section 6(2) of the APMC Act that the provisions made in other statutory enactments like the Municipalities Act are specifically excluded and will not operate over the area which is declared as "market area" under the APMC Act. The Legislature, in its wisdom and with a view to achieve the purpose for which the APMC Act is enacted, used a non-obstante clause in Section 63, whereby the operation of other statutory provisions, contained in other Statutes, has been specifically excluded.

14. The provisions of Section 63 of the APMC Act are extremely relevant and are reproduced as under:

"S.63 Provisions of certain laws not to apply:

Nothing contained in the Markets and Fairs Act, 1862 (Bom.IV of 1862) or in any law for the time being in force relating to the establishment, maintenance or regulation of a market shall apply to any market area or affect in any way the powers of a market committee or the rights of a holder of a licence granted under this Act to set up, establish or continue

any place for the purchase or sale of any agricultural produce notified under sub-section (1) of section-6 in such area"

15. From a perusal of the provisions of Section 63 of the APMC Act it becomes very clear that the Legislature has specifically excluded the provisions of not only the Bombay Markets and Fairs Act, 1862, but all other laws whereby the provisions are made relating to the establishment, maintenance or regulation of a market, as and when the statutory authority declares a particular area to be a "market area" under the provisions of the APMC Act.

16. It is further submitted that the "market area" under the APMC Act is the whole Taluka of Borsad and the "market yard" are the revenue limits of city survey limits of Borsad. Within the said area, the respondent Municipality is the owner of the land bearing city Survey No.3/111 over which, the respondent Municipality is operating and regulating the sale and purchase of the items specified in the above referred Notification. The regulated items are as under:

(a)	Vegetable	Potato, Tomato, Onion, Suran
(b)	Leafy Vegetables	Methi, Tandaljy, Mula
(c)	Fresh Vegetables	Brinjal, Lady's finger, Guwarsing, Mukshmelon, Gourd, Parwal, Cabbage, Cobi-Flower, Karela, Tursing, Val, Papdi, Valor, Chosby
(d)	Condiments	Chillies, Ginger, Corriander, Garlic
(e)	Fruits	Mango, Banana, Jamrukh, Lemon, Papaya and Bor in addition to agricultural produce mentioned above in the said area

17. The market, which has been operated on the land owned by respondent Municipality is located on the city Survey Number, at a place known as "Azad Medan", which is situated opposite the Fulbai Mata Temple, bearing city Survey No.4/2. It is alleged by the petitioner that the respondent Municipality has given licences to vendors, who are engaged in the sale and purchase of the restricted items, without the requisite licence from the Market Committee, which is mandatory. The number of vendors has been enumerated in the petition as under:

- | | |
|----------------------|--------------|
| 1.A,B,C,D 7 E Group | - 6 vendors |
| 2.F,G,H,I, J,K Group | - 24 vendors |
| 3.L,M,N,O Group | - 10 vendors |

18. It is the grievance of the petitioner that all these vendors have been issued licences by the respondent Municipality under the provisions of the Municipalities Act, on a payment of Rs.00.50 Ps. per day. The Copies of the receipts issued by the Municipality are annexed collectively as Annexure "B" to the writ petition.

19. Referring to the relevant provisions of the APMC Act, as discussed hereinabove, Shri Tushar Mehta submits that the basic idea behind the enactment of the APMC Act and constitution of the Market Yards is to provide easy access to the agriculturists to come to a particular place, which is declared as a market yard, where the licence holders, who are given licences after proper scrutiny, will be available for purchasing the agricultural produce brought by such agriculturists, thereby ensuring that the agriculturists would get the highest amount for their produce, since the middle-man would be eliminated in the process. The provisions of the APMC Act, referred to above, make it very clear that the respondent

Municipality has no right, power, competence, or jurisdiction to operate and regulate a fruit and vegetable market where buying and selling of regulated items takes place, within the area, which is declared to be a "market area" under the provisions of the APMC Act. The Notification dated 13.12.1971, under the provisions of Section 5(1) of the APMC Act, has specified the sale of the items, which have been regulated and by engaging in the sale and purchase of fruits and vegetables, specified in the said notification, the very purpose of the enactment of the APMC Act would be frustrated and would detrimentally affect the welfare of the agriculturists, while being in flagrant violation of the provisions of the APMC Act.

20. Resisting the challenge of the petitioner, Shri D.P.Kinariwala appearing for Shri Rajesh R. Dewal has argued on behalf of the respondent Municipality that in fact, the writ petition is not maintainable and does not deserve to be allowed since the prayer of the petitioner gives the impression that the

respondent Municipality is operating a market place within the area which is declared to be a "market area" under the provisions of the APMC Act, whereas the respondent Municipality had not issued any licence to any of the vendors to sell fruits and vegetables which are regulated items. In support of this contention, Shri Kinariwala has drawn the attention of the Court to the contents of the Additional Affidavit-in-reply on behalf of the respondent sworn by Shri Rameshbhai R.Ulra, Chief Officer of Borsad Nagarpalika and affirmed on 10.1.2006. It is admitted in the Additional Affidavit that the vendors are selling fruits and vegetables after purchasing from the market yard or sub-market yard, on the land owned by respondent Nagarpalika. It is not disputed that the same vendors are selling these vegetables and fruits on the land of the Nagarpalika as "unauthorised occupants", in addition to other vendors, who are also selling their goods on the land of the Nagarpalika. It is stated in the Additional Affidavit that these persons are using the land of the Nagarpalika in an unauthorised manner, and the respondent Nagarpalika has never issued any

licence to any of the vendors to sell their vegetables or fruit or any other item on the land of the Nagarpalika. For the unauthorised occupancy of the land, the respondent Nagarpalika is collecting "fees" or "penalty" from them as permissible under the Municipalities Act, more particularly under Section 118 of the Municipalities Act. It is also stated in the said Additional Affidavit that merely because the fees are collected from the unauthorised occupants, it cannot be said that the unauthorised persons are being permitted to sell their fruits and vegetables or any other items on the land of the respondent Nagarpalika. It is specifically denied that the vendors have been issued any kind of licence or permit to sell fruits and vegetables as stated by the petitioner in the writ petition. The slips of Rs.00.50 Ps. Annexed collectively as Annexure "B" with the writ petition are the amounts of fees or penalty for unauthorised occupancy of the respondent Nagarpalika's land and not a permit or licence for the sale of regulated items of vegetable or fruits, as is being construed by the petitioner.

21. I have heard the detailed submissions of the learned counsel for the petitioner as well as the learned counsel for the respondent Municipality and have perused the relevant provisions of the APMC Act and the Municipalities Act and have given deep consideration to the submissions made on both sides.

22. The admitted position is, that there is no dispute regarding the applicability of the APMC Act nor the validity of its provisions. The respondent Municipality does not deny the legal position that the regulated items of fruits and vegetables as per the Notification issued by the petitioner cannot be sold by operating a market within the market area as declared by the petitioner Market Committee, except by persons, who have obtained a licence from the petitioner Market Committee. The arguments and submissions of the learned counsel for the respondent Municipality are to the effect that, as is clear from the Additional Affidavit in reply, the vendors are selling fruits and vegetables on the land of the respondent Municipality as unauthorised occupants, for which the "fees" or "penalty", as contemplated

under Section 118 of the Municipalities Act is being levied upon them. It is denied that any licence has been issued by the respondent Municipality to any of the said vendors.

23. It is evident from the record that the first Affidavit-in-reply was filed by the respondent Municipality, having being sworn by one Shri R.T.Patel, Chief Officer, Borsad Municipality and affirmed at Borsad on 3rd day of September, 1993. A preliminary objection has been taken regarding the pendency of Civil Suit No.14/993 filed by the vendors against the respondent Municipality, in which the petitioner Market Committee has filed an application for impleadment as a party. However, no further details regarding the outcome of this Civil Suit, nor issues framed therein, if any, were divulged by the learned counsel for the Municipality, even though he had been put to notice by this Court, to have the information ready on the day of the hearing.

24. The contents of the first Reply Affidavit are extremely revealing. In para 7 thereof, which is

available on the paper book at running page 29, there is a categorical admission on the part of the respondent Municipality, which is quoted herein-below:

"It is submitted that the respondent-Municipality grants licence to such vendors on daily basis without creating any lease in favour of such vegetable vendors. The respondent Municipality is recovering daily licence fee of Rs.0-50 / 1.00 for the permission to use the Municipal premises from each vegetable vendor. The respondent Municipality has not granted any lease to any vegetable vendor."

25. From this averment in the Reply Affidavit it is evident that the respondent Municipality is granting licence to vendors on a daily basis, without creating any lease in their favour and recovering a daily licence fee of Rs.00.50 Ps. / Rs.1.00 Ps. for the permission to use the Municipal premises from each vegetable/fruit vendor. This is precisely the grievance of the petitioner Market Committee. The receipts of Rs.00.50 Ps. have been annexed as Annexure "B" collectively to the writ petition and they show that they have been issued by the Borsad Nagrpalika in the year 1992.

26. Thereafter, the respondent Municipality has filed an Additional Affidavit-in-Reply, sworn by one Shri Rameshbhai R.Ultra and affirmed on the 10th day of January, 2006. The opening paragraph reads as under:

"That the petitioner has filed the above referred petition against the Borsad Municipality, wherein the concerned officer of the Municipality has filed the affidavit in reply at relevant point of time which is on record in this petition. I the respondent No.2 herein would like to **file additional affidavit in reply in support of reply filed earlier** with certain correct facts which are required to bring notice of this Hon'ble Court. (emphasis supplied)

1. That I have read the contentions raised in the petition filed by the petitioner and I am fully conversant with the facts of the present case, hence I am filing the present additional affidavit-in-reply, by incorporating the correct facts of the case."

27. A perusal of the above recital makes it very clear that this is an Additional Affidavit-in-reply in support of the reply affidavit already filed earlier. It is not an affidavit in **supersession** of the earlier affidavit, but is **supplementary** thereto. There is no application on record seeking to withdraw the earlier Reply Affidavit. The Dictionary meaning

of the word "*additional*", according to the Shorter Oxford English Dictionary, Fifth Edition, Volume 1 .

A-M is as under:

"**A** noun. Something added, an extra
B adjective. Existing in addition; added,; supplementary."

28. It can, therefore, be safely derived that the additional affidavit is in addition to, or supplementary to, the first affidavit in reply and the averments made in the first affidavit in reply remained untouched or uncontroverted. In the Additional Affidavit-in-Reply, the respondents have done a total volte-face. In the first Affidavit-in-Reply there is a categorical admission regarding the issuance of licences to vendors by the respondent Municipality. However, in the Additional Affidavit-in-Reply, the respondent Municipality has diametrically changed its stand and is now contending that since the vendors are using the land of the Nagarpalika unauthorisedly, the respondent Municipality is collecting "fees" or "penalty" from them as permissible under Section 118 of the

Municipalities Act but is not issuing licences. Both of these Reply Affidavits have been sworn on oath and duly affirmed. It is evident that, after the filing of the first Affidavit-in-Reply, the respondent Municipality has deliberately changed its stand, without there being any application for withdrawing the earlier affidavit. The less said about the method adopted by the respondent Municipality in this regard, the better but to say the least the Additional-Reply-Affidavit is clearly an after thought, casting a reasonable doubt upon the veracity of the contents. However, the categorical admission in the first reply affidavit filed by the respondent Municipality cannot be over-looked or ignored by this Court and is duly taken note of.

29. At this stage, the provisions of Section 118 of the Municipalities Act will be relevant. Chapter VIII of the Gujarat Municipalities Act, 1963 is a Chapter relating to "Municipal Taxation". This Chapter is divided into three parts. The first is the imposition of taxes, the second is the assessment of and liability of taxes on buildings or lands and the

third is the power to charge fees. Section 118 comes in the third part of Chapter VIII, which is the power to charge fees and reads as under:

"118. Fees may be charged for certain licences - (1) When any licence is granted under this Act, or when permission is given thereunder for making any temporary erection or for putting up any projection, or for the temporary occupation of any public street or other land vested in the municipality, the authority granting or giving such licence or permission may charge a fee for the same:

Provided that when permission is given for putting up a projection, the authority giving such permission may charge every year a recurring fee until the projection is removed.

Levy of fees for unauthorized occupation or projection - (2) The municipality may charge a higher fee by way of penalty for any erection, or projection, or for the use or occupation of any public street or other land vested in the municipality, by any person without its permission or licence. Such fee shall be leviable irrespective of any other penalty or liability to which the person liable to pay the same may be subject under any other provision of this Act or any other law for the time being in force.

The rates of such higher fees shall be determined by rules.

(3) Market and their fees - A Chief Officer may also charge such fees as may be fixed by bye-laws under clause (a) of sub-section (1) of section 275 for the use of any such places mentioned in that clause as belong to the municipality."

30. Reliance is being placed by the respondent Municipality on Section 118(2).

31. There is no dispute regarding the provisions of this Section and the power of the Municipality to levy fees for unauthorised occupation or projection as stated in Section 118(2). However, this cannot, by any stretch of the imagination, be construed as permitting the respondent Municipality to issue licences for the sale of regulated items of fruits and vegetables as specified by notification under the APMC Act and for which a licence is required to be issued by the petitioner Market Committee, as per the provisions of the APMC Act. The respondent Municipality has no role to play under the statutory provisions of the APMC Act, in this regard.

32. The word "market" has not been defined in the Municipalities Act. However, Section 209 gives the power to remove persons from Municipal market and reads as under:

"209. Power to remove persons from municipal markets - If any officer specially

empowered in this behalf by the municipality is satisfied that any person occupying any stall or space in any market is in unauthorized occupation of the stall or space or continues to occupy the stall or space after authority to occupy has ceased, he may, with the previous sanction of the municipality, require such person to vacate the stall or space within such time as may be mentioned in the requisition and if such person fails to comply with the requisition, such person may, in addition to any penalty which may be imposed under this Act, be summarily removed from the stall or space."

33. If the contents of the Additional-Affidavit-in-Reply filed by the respondent Municipality are taken to their logical conclusion, and if it is accepted as stated therein that the vendors are unauthorised, then the next question would be that why the powers under Section 209 have not been invoked by the respondent Municipality ever since 1992.

34. A statute is the law of the land. There is no doubt that the APMC Act and the Municipality Act operate within the same area i.e. Borsad Taluka. However, there are vital differences in their spheres of operation, which have been well defined in both the Statutes. As far as the provisions of the APMC Act are concerned, they have an over riding effect by virtue of Section 63 thereof. There is no

over-lapping or conflict in the respective spheres of jurisdiction and the powers conferred by the two Statutes i.e. the APMC Act and the Municipalities Act, even though they operate within the same area. Therefore, the stand of the respondent Municipality that they are not issuing licences but are only charging "fees" or "penalty" under Section 118, for unauthorised occupation, is not at all tenable or sustainable. The reason is obvious. The first Affidavit-in-Reply contains a categorical admission that daily licences were being issued to these vendors by the Municipality. This could not have been done, since, the provisions of the APMC Act were applicable within the "market area" which includes the land owned by the Municipality. Realising this, a diametrically opposite stand is now sought to be taken by filing the Additional-Affidavit-in-Reply and by making an attempt to water down or dilute the said admission and trying to bring it within the ambit of "fees" or "penalty" under Section 118 of the Municipalities Act. The respondent Municipality cannot be permitted to blow hot and cold in the same breath and shift its stand as it thinks it

convenient or expedient to do so. The receipts of Rs.00.50Ps. attached by the petitioner Market Committee as Annexure "B" have been issued in the year 1992. Even if it is assumed that the respondent Municipality is not issuing any licences but is levying penalty upon the unauthorised vendors, then it does not stand to reason why, since the year 1992, these unauthorised vendors have been permitted to carry on the buying and selling of regulated items of fruits and vegetables, without any licence from the petitioner Market committee in an unauthorised manner, on the land owned by the respondent Municipality, without any action being taken against them. What emerges from the entire factual matrix, as illustrated by the material on record, is the irresistible conclusion that there is tacit connivance on the part of the respondent Municipality as far as the sale and purchase of regulated items of fruits and vegetables by the "unauthorised" vendors is concerned. This situation is going on ever since the year 1992 and there is nothing on record to suggest that it has been stopped even now.

35. One of the arguments raised by the learned counsel for the respondent Municipality is that the petitioner Market Committee has also not resorted to the powers under section 30 of the APMC Act. Section 30 reads as under:

"30.(1) The Chairman, Vice-Chairman or Secretary of the market committee or any other member, officer or servant authorised by the committee in this behalf may summarily evict from the market any person found to be operating in the market area without holding a valid licence.

(2) Such eviction shall be without prejudice to any punishment to which the person evicted may be liable under this Act."

36. Be that as it may, this court cannot be a mute spectator to the blatant violation of the provisions of any valid law or statute which is holding the field such as the APMC Act. Neither can an illegality or violation of the provisions of such Statute be allowed to be perpetuated. The petitioner Market Committee and the respondent Municipality are both Statutory Bodies and it is presumed that the authorities constituted under them are manned by mature, law-abiding and responsible citizens. A situation in which one Statutory Body is at loggerheads with another, both of which are operating

within the same area, is, to say the least, extremely unhealthy and unpalatable. It does not send out a good message to the public and sets a bad precedent. The law applies equally to every person and both the petitioner and the respondent are constituted of individuals. Maybe, this alone has given rise to the conflict.

37. As far as the petitioner Market Committee and the respondent Municipality are concerned, there is no conflict in any of the provisions of the Statutes governing either of them. Therefore, it is highly undesirable that both statutory bodies should choose to adopt an adversarial and confrontationist attitude towards each other for whatever reason. Such a situation should not be permitted to continue, in the overriding public interest, which is much above any private grievance of individuals.

38. After considering the entire factual and legal position, this court is of the considered opinion that the writ petition deserves to be allowed. The writ petition is therefore allowed in the following

terms:

(a) The respondent Municipality is restrained from permitting the unauthorised vendors of fruits and vegetables from selling the regulated items of the fruits and vegetables after purchasing them from the market yard or sub-market yard, without the requisite licence for doing the same from the competent authority which in this case is the petitioner Market Committee, on the land owned by the respondent Municipality.

(b) It is directed that the competent authorities of the petitioner Market committee and the respondent Municipality will hold meetings in order to resolve the issue in question amicably, in a spirit of mutual co-operation, so that the provisions of the APMC Act are not violated, directly or indirectly.

(c) It is open to the petitioner Market Committee to resort to the procedure envisaged under Section 30 of the APMC Act.

(d) It is also open to the respondent Municipality to take recourse to any provisions which are available to it under the Municipalities Act, including Section 209 thereof, to prevent unauthorised occupants/vendors from selling regulated items of fruits and vegetables without licences from the competent authority in this regard.

Rule is made absolute. There shall be no order as to costs.

(Smt.Abhilasha Kumari,J)

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